

Rhonda Bailey, #14417
Attorney for Plaintiff
P. O. Box 45288
Salt Lake City, Utah 84145-0288
Telephone: (801) 526-9765
File: 1438

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

In re: Eska M Bird Debtor.	Bankruptcy No. 18-27612 Chapter 7 Adversary Proceeding No. Hon. Kevin R. Anderson
Department of Workforce Services, Plaintiff, v. Eska M Bird, Defendant.	
APPLICATION FOR DETERMINATION OF DISCHARGEABILITY OF DEBT	

The Department of Workforce Services, having examined the accounts and conduct of Defendant, and being satisfied that probable grounds exist for the determination that the indebtedness of the defendant to it is nondischargeable under §523(a)(2) and §523(a)(7) of the Bankruptcy Code, does hereby oppose the granting to Defendant of a discharge from said indebtedness and specifies the following grounds:

JURISDICTION

1. The above entitled Court has jurisdiction to hear this adversary proceeding pursuant to Bankruptcy Rule 7008 and 28 USC §1409. This proceeding arises in a case under Title 11 of the United States Code, to-wit: Eska M Bird, Debtor, Case Number 18-27612, Chapter 7 of the Bankruptcy Code, in the above entitled Court, i.e., the United States Bankruptcy Court for the District of Utah.

2. This complaint constitutes a core proceeding under 28 USC §157(b)(2)(I) and Bankruptcy Rule 7008 inasmuch as it is an action for a determination as to the dischargeability of a debt owed by the Defendant to the Plaintiff.

3. If it should be determined that this is a non-core proceeding the Plaintiff consents to entry of final orders or judgment by the Bankruptcy Court.

4. The Plaintiff, Utah Department of Workforce Services ("Department"), is charged with, among other things, administering Utah's unemployment insurance program pursuant to Utah code section 35A-4-502.

CAUSE OF ACTION

5. That Defendant, Eska M Bird, received unemployment benefits from February 6, 2016 to July 23, 2016. See Benefit Summaries attached hereto as Exhibit A.

6. That persons, such as Defendant, who are receiving unemployment benefits must, as a condition precedent to the receipt of benefits, make weekly certification to the Department that they are eligible for benefits.

7. That Defendant certified that she read and agreed to comply with the weekly certification and instructions. See Example attached hereto as Exhibit B.

8. That by way of false pretenses and false representations Defendant obtained from the Department unemployment insurance benefits to which Defendant was not entitled for the weeks

of February 6, 2016 through April 30, 2016. See Notice of Unemployment Benefit Overpayment attached hereto as Exhibits C

9. That the above-stated false representations consisted of Defendant intentionally under-reporting and/or report earnings from Wal-Mart Associates Inc and Pablo's Barber Shop & Beauty Salon LLC. See attached sheet designated as Page 6 and Exhibit A.¹

10. That by virtue of said false representations, Defendant obtained from the Department the sum of \$1,944.00 in unemployment benefits to which the Defendant was not entitled.

11. That subsequent investigation by the Department disclosed that during the aforesaid weeks, the Defendant had knowingly failed to disclose material information for the purpose of obtaining unemployment benefits to which Defendant was not entitled.

12. That an administrative decision was issued by the Department determining that the Defendant was working and had earnings while receiving unemployment insurance benefits and knowingly misreported and/or failed to report these earnings in order to receive benefits to which Defendant was not entitled.

13. That, pursuant to Utah Code Section 35A-4-508(7), an administrative decision that has not been appealed becomes final once issued. Additionally, judicial review of the administrative decision is only permitted once all remedies provided for by the Department have been exhausted.

14. That Defendant was given an opportunity to appeal the Department decision and failed to do so. The time for appealing the administrative decision has passed and the Department's decision stands.

¹ Note that "Current Earn" is income reported by Employer for that specific week; "Original Earn" is income reported by Defendant for that same week.

15. That pursuant to Section 523(a)(2)(A) of the Bankruptcy code, the debt owed to the Plaintiff by Defendant is nondischargeable.

16. With allowance for adjustments, set-offs, and repayments the sum of \$1,160.88 in improper payments is outstanding.

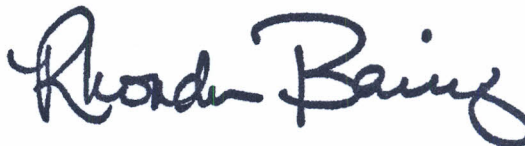
17. That pursuant to Utah Code Section 35A-4-405(5) the defendant was assessed a civil penalty in the sum of \$1,944.00 as a direct result of Defendant obtaining unemployment insurance benefits through fraud.

18. That the assessed penalty is nondischargeable under §523(a)(7) of the Bankruptcy Code as a fine, penalty or forfeiture payable to and for the benefit of a governmental unit.

19. With allowance for adjustments, set-offs, and repayments the sum of \$1,834.00 in assessed penalty is outstanding.

WHEREFORE, the undersigned creditor prays this court find that pursuant to §523(a)(2)(A) and §523(a)(7) of the Bankruptcy Code said defendant is not entitled to a discharge of said debt that includes an overpayment of \$1,160.88 and a statutory civil penalty of \$1,834.00.

DATED this 4th day of March, 2018.



Rhonda Bailey, #14417
Attorney for Plaintiff
140 East 300 South
P. O. Box 45288
Salt Lake City, Utah 84145-0288
Telephone: (801)526-9765


STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

Amy Barnes, being first duly sworn, deposes and states that she is the Tech Service/Compliance Supervisor of the Utah Department of Workforce Services; that she has read the foregoing complaint and knows and understands the allegations and statements contained therein; that the same are true to the best of her knowledge.



Amy Barnes
Tech Service/Compliance Supervisor

SUBSCRIBED AND SWORN to before me this 4th day of March, 2018.



Notary Public



PAGE SIX COMPLAINT CLAIMANT: Eska M Bird SSN: xxx-xx-1438							
Week Ending	Benefits Received	Earnings Reported By Claimant	Earnings Reported By Employer*	Benefits Entitled	Benefits Received By Fraud	Amount Repaid	Fraud Balance Owing
4/30/2016	\$281.00	\$0.00	\$131.00	\$234.00	\$47.00	\$0.00	\$47.00
4/23/2016	\$281.00	\$0.00	\$197.00	\$168.00	\$113.00	\$0.00	\$113.00
4/9/2016	\$281.00	\$0.00	\$134.00	\$231.00	\$50.00	\$0.00	\$50.00
3/26/2016	\$281.00	\$0.00	\$276.00	\$89.00	\$192.00	\$0.00	\$192.00
3/19/2006	\$281.00	\$0.00	\$392.00	\$0.00	\$281.00	\$0.00	\$281.00
3/12/2016	\$281.00	\$0.00	\$413.00	\$0.00	\$281.00	\$0.00	\$281.00
3/5/2016	\$281.00	\$0.00	\$352.00	\$0.00	\$281.00	\$84.12	\$196.88
2/27/2016	\$281.00	\$0.00	\$283.00	\$0.00	\$281.00	\$281.00	\$0.00
2/20/2016	\$281.00	\$42.00	\$241.00	\$124.00	\$157.00	\$157.00	\$0.00
2/13/2016	\$281.00	\$0.00	\$235.00	\$130.00	\$151.00	\$151.00	\$0.00
2/6/2016	\$281.00	\$0.00	\$194.00	\$171.00	\$110.00	\$110.00	\$0.00
							\$1,160.88

*Earnings Reported by Wal-Mart Associates Inc and Pablo's Barber Shop & Beauty Salon LLC



IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

IN THE MATTER OF:

ESKA M BIRD

DEBTOR

BANKRUPTCY NO. 18-27612

UTAH DEPARTMENT OF WORKFORCE SERVICES V. ESKA M BIRD

Adversary Proceeding Exhibit A

Unemployment Insurance

Benefit Summary

Print Date: 2/28/2019

SSN: xxx-xx-1438

PID: 070-672-362

ESKA BIRD
310 E 200 N APT 4
LOGAN, UT 84321-4165

Program Code:	UI	WBA:	281
BYB Date:	01/24/2016	MBA:	7,025
BYE Date:	01/21/2017	Balance:	783
Claim Status:	EL	Amt Pd:	6,854.00
Fund Code:	UI		
Work Search:	4	Ending Dt:	01/21/2017

BWE Date	File Date	Status/ Pay Type	Pay Date	Current Earn	Original Earn	Comp Amt	Clmt Amt	Stimulus Amt	Offset Amt	OP Amt
07/23/16	07/24/16	FP		0	0	281.00	0	0	281.00	0
07/16/16	07/17/16	PD-DD	07/17/16	0	0	281.00	281.00	0	0	0
07/09/16	07/10/16	PD-DD	07/10/16	0	0	281.00	281.00	0	0	0
07/02/16	07/03/16	PD-DD	07/03/16	0	0	281.00	281.00	0	0	0
06/25/16	06/26/16	PD-DD	06/26/16	0	0	281.00	281.00	0	0	0
06/18/16	06/19/16	PD-DD	06/19/16	0	0	281.00	281.00	0	0	0
06/11/16	06/12/16	PD-DD	06/12/16	0	0	281.00	281.00	0	0	0
06/04/16	06/05/16	PD-DD	06/05/16	0	0	281.00	281.00	0	0	0
05/28/16	05/29/16	PD-DD	05/29/16	60	0	281.00	281.00	0	0	0
05/21/16	05/22/16	PD-DD	05/22/16	0	0	281.00	281.00	0	0	0
05/14/16	05/15/16	PD-DD	05/15/16	42	0	281.00	281.00	0	0	0
05/07/16	05/08/16	PD-DD	05/08/16	55	0	281.00	281.00	0	0	0
04/30/16	05/01/16	PD-DD	05/01/16	131	0	234.00	281.00	0	0	47-F
04/23/16	04/24/16	PD-DD	04/24/16	197	0	168.00	281.00	0	0	113-F
04/16/16	04/17/16	PD-DD	04/17/16	39	0	281.00	281.00	0	0	0
04/09/16	04/10/16	PD-DD	04/10/16	134	0	231.00	281.00	0	0	50-F
04/02/16	04/03/16	PD-DD	04/03/16	42	0	281.00	281.00	0	0	0
03/26/16	03/27/16	PD-DD	03/27/16	276	0	89.00	281.00	0	0	192-F
03/19/16	03/20/16	EE-DD	03/20/16	392	0	0	281.00	0	0	281-F
03/12/16	03/13/16	EE-DD	03/13/16	413	0	0	281.00	0	0	281-F
03/05/16	03/07/16	EE-DD	03/07/16	352	0	0	281.00	0	0	281-F
02/27/16	02/28/16	EE-DD	02/28/16	283	0	0	281.00	0	0	281-F
02/20/16	02/22/16	PD-DD	02/22/16	241	42	124.00	281.00	0	0	157-F
02/13/16	02/16/16	PD-DD	02/16/16	235	0	130.00	281.00	0	0	151-F
02/06/16	02/08/16	PD-DD	02/16/16	194	0	171.00	281.00	0	0	110-F



IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

IN THE MATTER OF:

ESKA M BIRD

DEBTOR

BANKRUPTCY NO. 18-27612

UTAH DEPARTMENT OF WORKFORCE SERVICES V. ESKA M BIRD

Adversary Proceeding Exhibit B

- **To receive payment you must file a Weekly Claim.**

- Eligibility for unemployment benefits is determined on a week-by-week basis.
- A benefit week begins on Sunday and ends on Saturday.
- The weekly claim must be filed within 20 days from the week ending date or it may not be paid.
- The preferred method is by filing online at jobs.utah.gov.
- If you have issues preventing weekly claim filing, you may contact the Claims Center:

Salt Lake and South Davis Counties (801) 526-4400
Weber and North Davis Counties (801) 612-0877
Utah County (801) 375-4067
Balance of state and out-of-state 1-888-848-0688.

- Keep your PIN number confidential. You will be held responsible for claims filed using your PIN number.
- **You are required to notify the Claims Center if you travel or move to a location outside the United States.**

- **If you work while claiming benefits, you must report all work and gross earnings.**

- Failure to report ALL work and earnings constitutes fraud. The law provides severe penalties for false statements to obtain benefits.
- You can earn up to 30% of your weekly benefit amount before any deduction is made from your benefits.

- **You must make at least four new full-time employer contacts each week.**

- You must be able and available for full-time work.
- You must keep a written record of your contacts.
- If you reside in the state of Utah, you are required to register for work with the Utah Department of Workforce Services. Upon completion of this filing process, you will be directed back into your personalized "My UI Account". To register, click on the link that states "Register for work". You must complete all 10 steps and **complete the Online Overview and Workshops** before the registration is considered complete.
- If you live outside the state of Utah, you must register for work with that state's employment office.
- **Failure to register for work within the next five working days could result in a denial of benefits.**

☐ I certify I have read and agree to comply with the above Weekly Claim and Work Search Instructions. I understand that failure to comply with these instructions could result in a DENIAL of benefits.

Continue

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

IN THE MATTER OF:

ESKA M BIRD

DEBTOR

BANKRUPTCY NO. 18-27612

UTAH DEPARTMENT OF WORKFORCE SERVICES V. ESKA M BIRD

Adversary Proceeding Exhibit C

DATE MAILED: 9/27/2016

SSN: xxx-xx-1438

ESKA BIRD
129 W 900 N APT 1
LOGAN, UT 84321-3281

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After a thorough review of the available information presented to the department, it is concluded that you were working and had earnings while receiving unemployment insurance benefits and knowingly misreported or failed to report these earnings.

You will receive a separate notice indicating any overpayments and penalties associated with this disqualification.

You are disqualified from receiving unemployment benefits or waiting week credit for 49 weeks effective 09/25/2016 through 09/02/2017 and until the overpayment and penalty amounts are repaid in full as provided under Section 35A-4-405(5) of the Act. (See reverse) The disqualification time period is determined by the number of weeks in which the misrepresentation(s) or omission(s) occurred.

RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Unit, P.O. Box 45244, Salt Lake City, UT 84145-0244, or Fax 801-526-9242, or online at <http://www.jobs.utah.gov/appeals/>. Your appeal must be in writing and must be received or postmarked on or before 10/12/2016. An appeal received or postmarked after 10/12/2016 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing. See attached information for a more detailed explanation of the law provisions. Additional information and assistance about filing an appeal is available at jobs.utah.gov/appeals/

UI CLAIMS CENTER PHONE NUMBERS: S.L.: 801-526-4400, Ogden: 801-612-0877, Provo: 801-375-4067, Out of Area: 888-848-0688. APPEALS PHONE NUMBER: S.L.: 801-526-9300, Toll Free: 877-800-0671.

REPR.: D Burnett

EMP. #: 7289



**Unemployment Benefit
Overpayment Notice**

DATE MAILED: 9/27/2016

Acct number: 070672362

ESKA BIRD
129 W 900 N APT 1
LOGAN, UT 84321-3281

FR

NOTICE OF UNEMPLOYMENT BENEFIT OVERPAYMENT

You are considered to have knowingly withheld material information or failed to report information in order to receive unemployment benefits to which you were not entitled. This has created an overpayment of \$1,944.00 and a penalty of \$1,944.00 that must be repaid before you are eligible for any future benefits or waiting week credit as provided under Section 35A-4-405(5) of the Utah Employment Security Act. The total overpayment and penalty amount is due and payable immediately to: Utah Department of Workforce Services, Collections Unit, P.O. Box 45288, Salt Lake City, UT 84145-0288. Record your Account Number on your check or money order. Do not send cash.

Any payments currently due may be reclaimed to reduce the total overpayment. If you are unable to pay the total overpayment amount within 45 days, a lien will be filed against your property. You should contact the Collections Unit immediately and make arrangements for repayment. In Salt Lake County call 801-526-9235. Outside of Salt Lake County, or outside of Utah, call 800-222-2857. You can also arrange to pay by MasterCard or VISA credit or debit card. Recovery of overpayments will be enforced by all lawful means such as lien, garnishment of wages or bank account, recovery of state and/or federal tax refunds, etc.

The overpayment(s) above may not include credits or offsets applied to repay this overpayment nor does it include any previous overpayment balance you may have.

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